

***United States Court of Appeals
for the Second Circuit***



APPELLEE'S BRIEF

B

~~SECRET~~

In The
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 74-1682

JOHN WESLEY RALLS,
PETITIONER-APPELLEE

vs.

JOHN R. MANSON, COMMISSIONER OF CORRECTIONS OF THE
STATE OF CONNECTICUT, RESPONDENT-APPELLANT

APPELLEE-PETITIONER'S
~~STATE OF CONNECTICUT~~

MORTON P. COHEN,
DAVID GOLUB,
Attorneys for APPELLEE-
PETITIONER,
University of Connecticut
School of Law Legal Clinic
West Hartford, Connecticut
06117



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STATEMENT OF UNDERLYING CRIME,
EVIDENCE EXHIBITS

INTRODUCTION

On June 10, 1974, at 9:30 a.m., counsel for John Ralls, appellee herein, received a telephone communication indicating that an Order had been entered by this Court requiring counsel for both parties, by Wednesday, June 12, 1974, to submit a factual statement of 8 to 10 pages as to the underlying crime and the evidence at the Connecticut Superior Court trial including a summary of each witness' testimony and a brief description of the exhibits. This Statement is submitted in compliance with said Order.

UNDERLYING CRIME

As recited by State's witnesses on March 1, 1970, the deceased body of one Barbara Howell was discovered in a car located in a First National store parking lot in Hamden, Connecticut. The deceased had been shot sometime during the morning of the same day.

EVIDENCE AT TRIAL

A. Prosecutor's Case

Jury selection commenced November 4, 1970, and concluded November 9, 1970 (Trial Transcript, hereafter TT, Vol. I). The taking of evidence commenced on November 10, 1970 (TT, Vol. II). Jerrold H. Barnett, counsel for the State herein, was one of the two prosecuting attorneys at the trial.

The State's first witness was William N. Notaro who testified to finding the body of the deceased on March 1, 1970, the location of the car within which the body was found, and that he communicated this to the police (TT, Vol. 2 pp. 5-14). The next witness was Clarence A. Drumm, a Hamden, Connecticut police officer, who testified to going to the scene, determining that the victim was dead, and commencing on investigation together with the Detective Bureau (TT, Vol. II, pp. 15-22). The next witness was Dr. Sterling P. Taylor, the Medical Examiner for New Haven County, who testified that he determined the victim was dead, that the death was probably between 9 and 11 a.m., March 1, 1970, and that she had been shot (TT, pp. 25-33).

Peter Cafano then testified that he was a Hamden Police Detective who went to the scene at 2 p.m. on March 1, 1970, that he discovered three spent cartridges and a bullet in the car, that the car was registered to the deceased, that four fingerprints were found on the car, that the physical evidence was turned over to a State Police Sargeant McDonald, that he had no idea when the fingerprints were made, that someone may be in a car for a long time and leave no prints, and that he found a L&M cigarette in the car (TT, pp. 34-57). Dr. Bernard F. Mann then testified as a pathologist that he performed a autopsy on the deceased, found four wounds, two bullets and that deceased died of multiple gunshot wounds. He testified through use of a photograph of the corpse, and stated he had no idea of time of death (TT, pp. 58-65). James E. McDonald, a Connecticut

State Police officer then testified that the bullets and cartridges in question came from a .32 caliber semi-automatic, that he determined that one of the fingerprints in the car belonged to Mr. Ralls, that he attempted to find out whose were the other prints in the car, and could not, and that there was no weapon delivered from whence the bullets originated. (TT, pp 66-96).

Sergeant McDonald's testimony formed one of the two bases for the order of a new trial by the court below. During his testimony regarding the similarity between the one identifiable car fingerprint and Ralls' fingerprints, Sergeant McDonald used a fingerprint card previously on record with the Connecticut State Police and showing Ralls' arrest Record. The Court twice cautioned the jury that " ... it might have been just a minor matter ... " (TT, pp. 82, 84) and the actual arrest record was covered up, but what was shown to the jury was a fingerprint card whose reverse side had a sheet of paper covering all but the words "Please furnish all additional criminal history and police record on separate sheet." (Exhibit attached hereto).

The next witness was Malcolm E. McHenry, a Hamden police officer who found \$25.63 in the deceased's wallet at the scene and one ring. (TT, pp Benjamin Rawls then testified that John Ralls was his son, that John lived with his father at 109 Lilac Street, New Haven, that at 9:30 or 10:00 a.m., March 1, 1970, John drove a car to pick up some clothing for his children from Barbara Howell and returned 9:45 a.m. with the clothing and then left

with his brother and sister-in-law, that a child had found a .25 caliber bullet and given it to him, that he didn't see John Ralls again until after he was arrested, that he didn't know if a man talking to Mrs. Howell at the car left in her car or not. (TT pp. 103-119). John Cronin then testified that he was a Hamden Police officer, and that he had been told by Benjamin Rawls that Rawls had found a bullet on John Ralls' bedroom floor, that it was now lost, and that he believed it was a .32 caliber (TT pp. 120-126). Ada Rawls then testified he didn't act any different on March 1, 1970, from the usual, and that she didn't tell the police that John wanted to kill his mother-in-law, Barbara Howell. (TT pp. 127-149).

John D. Cronin then testified that he had taken a statement from Ada Rawls to the extent that she had said there was some hostility between John Ralls and Barbara Howell. (TT pp. 150-156). Sharon Ralls then testified that she was 8 years old, and, at various times, that she never saw a gun, but her sister said that the sister had, or perhaps Sharon did. (TT pp. 157-164). Jacquelyn Ralls then testified that she was 9 years old, and that her sister said her daddy said he was going to hurt her grandmother, but this was stricken, and she then testified she didn't see a gun. (TT pp. 165-168).

Gwendolyn Ralls then testified, after exclaiming "you did do it", that John Ralls threatened the deceased in May of 1969, and that John Ralls had stabbed the witness in 1969, but the witness hadn't reported it to the police. (TT pp. 169-175). Donald Rawls then testified that he

was the brother of John Ralls, that John Ralls had shown him a .32 caliber automatic, that his mother told him that John told her that he was going to kill her or get his mother-in-law, and that John had once made a statement to the police about Donald and some color televisions. (TT pp. 176-195). Thereafter Samuel F. Bowens testified that John Ralls came to his house March 1, 1970 at about 10:30 or sometime after 10:00 a.m. to cash a \$500.00 check of the U.S. Chemical Company. (TT pp. 196-201). Sheila Bowens then testified that John Ralls came to her house on March 4, 1970, and stated he had not killed Barbara Howell and then police officers arrived and arrested him. (TT pp. 202-205).

Donna Burkman then testified that she and John Ralls both worked for U.S. Chemical Company, that in February, 1970, John Ralls had threatened to kill his mother-in-law, that a blank check had been taken from the Company and was subsequently cashed in the amount of \$500.00 and returned with the signature of Mr. Grossman, the authorized person, on it, as well as John Ralls and Samuel Bowens, that four other checks and \$80.00 cash were also taken from the Company (TT pp. 206-234). Charles Cook then testified that he worked with John Ralls and that Ralls had, about February, 1970, showed Cook a black gun. (TT pp. 206-220).

Malcolm E. McHenry, testified again saying that he arrested Ralls, that he gave him his warnings, that Ralls then possessed four checks, that subsequently Ralls stated that on February 28, 1970, his car broke down in front of Dunkin' Donut in West Haven and on March 1, 1970, he had walked to the deceased's to get some clothing and asked if she could

take him to Dunkin' Donut for his car, that she drove him home to drop off the clothing, then to Dunkin Donut where he got his car started between 10:15 and 10:30 a.m., and the deceased left, and that Ralls denied his guilt, but said he knew he would get the blame, so he ran away. (TT pp. 235-265). James Senior then testified that he saw John Ralls between 10:30 and 11:00 a.m. on March 1, 1970, he thinks, on foot at Ashmun, Munson and Henry Streets, and the witness stopped his car and gave Ralls a lift to Winchester Avenue. (TT pp. 265-778). Joseph J. Figaro then testified that he is a police officer, was on duty in the Dunkin Donuts area on February 28, 1970, and received no complaints of a disabled car.

Henry Culley then testified he worked at Dunkin' Donuts at or about 5 a.m. on March 1, 1970, and that he hadn't seen any cars parked as Ralls' would have been during that time, but that he was quite busy then. (TT pp. 281-284).

Percy Fuller then testified that he works next door to Dunkin' Donuts and that as far as he knew, he couldn't remember if there was a car there that morning. (TT pp. 285-288). James L. Jensen then testified that he didn't know if gas was bought from his station by Ralls that morning of March 3, 1970. (TT pp. 289-292). Bruce Bartholomew then testified that John Ralls did not come to his station on March 1, 1970. (TT pp. 292-294). William Hande then testified for the State that he was

a police officer and it took him a certain period to walk within a certain area of New Haven. (TT pp. 294-295). John D. Cronin then testified again, also regarding distances and driving speeds. (TT pp. 298-304).

At that point the State rested.

B. Defense Case

The defense presented no witnesses or exhibits.

EXHIBITS

A list of the exhibits before the Court is appended hereto.

CHARGE

Because of its importance to the decision of the Court below, a portion of the additional instructions to the jury by the trial court is appended.

Name Rawls, John Wesley
(Rawls, "")


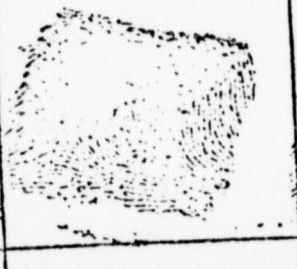
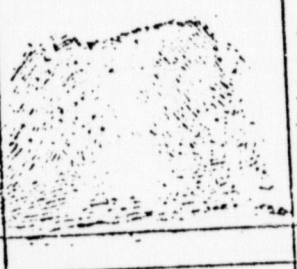


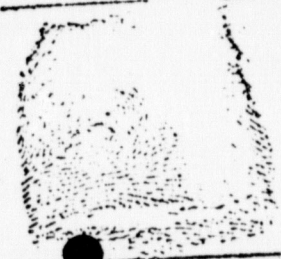
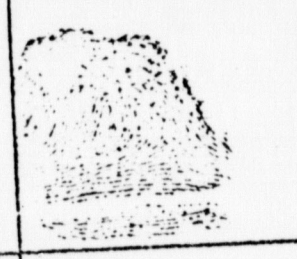

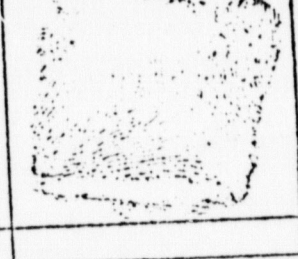

227299

Alias _____

Finger-Print
Classification _____

No. Y-69-01400 Color N Sex M

Reference
Classification _____

1. Right Thumb	2. R. Fore Finger	3. R. Middle Finger	4. R. Ring Finger	5. R. Little Finger
				
6. Left Thumb	7. L. Fore Finger	8. L. Middle Finger	9. L. Ring Finger	10. L. Little Finger
				

Impressions taken by: Robert J. Root
(Signature of official taking prints)

Note amputations _____

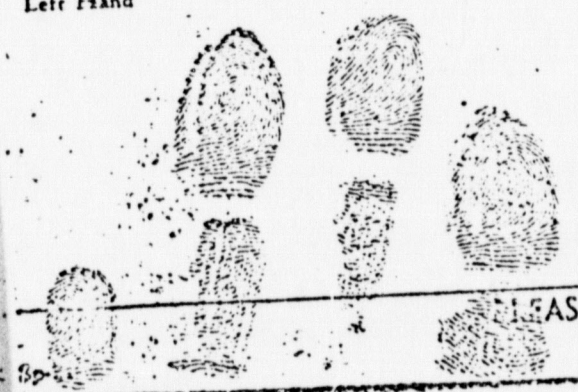
Signature of person fingerprinted
John W. Rawls

Date impressions taken 2-10-70

Four fingers taken simultaneously
Left Hand

L. Thumb R. Thumb

Four fingers taken simultaneously
Right Hand



PLEASE DO NOT FOLD THIS CARD

Robert J. Root

Connecticut State Police, Hartford 1, Conn.

STATE BUREAU of IDENTIFICATION



Please furnish all additional criminal history and police record on separate sheet

Copies of this print to

9-20-20

*General to the Department only
(See memo)*

Q Okay. Now, to get back to this fingerprint, I believe you testified that there were five latent prints delivered to you by Detective Cafano of the Hamden Police Department? .. A Yes, sir.

Q Did you compare any of them with fingerprints of John Ralls the defendant in this case?

A Yes, I did.

Q Did you find, in your opinion, as to whether or not any of the latents compared favorably with the fingerprint card of John Ralls?

A Yes, I did.

Q Showing you this fingerprint card, Sergeant, can you tell me whose fingerprint card that is?

A This is a fingerprint card of John Ralls, which was on file at the Bureau of Identification, also C.S.P.J. 227299.

Q What is the C.S.P. number?

A It is a central bureau for all the criminal arrest records in the State of Connecticut.

Q All right.

THE COURT: Just a moment. I ought to caution this jury at this particular time, that whatever it was, it might have been just a minor matter. I don't know the extent of it. It does n't affect this case, nor is it introduced for that purpose.

MR. SPERANDEO: Positively not.

MR. DEMAYO: I think at this point the jury ought to be excused.

THE COURT: All right. I will excuse the jury.

(The jury left the courtroom.)

MR. DEMAYO: Your Honor, we went through a rather elaborate precaution to avoid any mention of where this card came from.

THE COURT: I am sure the witness didn't know about it.

MR. DeMAYO: But he shouldn't have been asked to identify what this was.

MR. SPERANDEO: I did not have a chance to ask the further question as to this witness not knowing anything about the facts of this card, just the card was taken. The jury certainly, with all common sense, will know that fingerprints had to be taken from someplace, and I was just about to ask the question whether or not he just compared these prints. That's all.

THE COURT: As I say, I think I could duly caution the jury on it. I don't feel it is grounds enough for me, at this point, to declare a mistrial, but I think it is dangerously real close to it.

✓ MR. DeMAYO: I will move for a mistrial.

THE COURT: I will overrule it, and note an exception.

MR. DeMAYO: Thank you, your Honor.

THE COURT: You may recall the jury.

(The jury returned to the courtroom.)

THE COURT: Thank you. You may proceed.

MR. SPERANDEO: Thank you, your Honor. I want to make it perfectly clear that the only purpose of offering this card is to show that Sergeant McDonald compared a latent print with the prints of John Ralls.

THE COURT: Okay. I want to caution the jury again, that I don't know what the extent it covers, whether it might have been some minor matter, or it may have been an application for employment. You are not to give it any more weight than that. This man is being tried here on this case only.

MR. SPERANDEO: May it be marked, your Honor?

THE COURT: It may be marked State's Exhibit S.

(The above-mentioned fingerprint card of John Ralls was received and marked State's Exhibit

I N D E XS T A T E ' S E X H I B I T S

<u>DESCRIPTION</u>	<u>NO.</u>	<u>PAGE</u>
Photograph of the passenger front interior of automobile	J	45
L & M cigarette	K	57
Photograph of victim identified as Barbara L. Howell	L	63
Shell casing recovered from the rear seat of car	M	69
Shell casing in box labeled "Shell Number One"	N	70
Shell casing in box labeled "Shell Number Two"	O	70
Bullet recovered from left front floor of car	P	71
Bullet recovered from jaw of Barbara L. Howell	Q	71
Bullet recovered from chest cavity of Barbara L. Howell	R	71
Fingerprint card of John Ralls	S	84
Diagram of two fingerprints	T	86
Subpoena of Donald Ralls	XX	102
Statement of Ada Rawls	U-ID	136
Check dated March 2, 1970, in the amount of \$500.00	V	226
Checks numbered 11,016, 11,017, 11,019, and 11,020	W-1-W-4	228
Petty cash voucher in the amount of \$30.00	X	229

I N D E XS T A T E ' S E X H I B I T S

<u>DESCRIPTION</u>	<u>NO.</u>	<u>PAGE</u>
Envelope	Y	239
Identification card issued by First National Stores, Inc. for Gwendolyn Ralls, dated May 3, 1969	Z	240
Map, dated November 6, 1970	AA	248
Photograph of Dunkin Donuts	BB	251
Photograph of street in front of Dunkin Donuts	CC	252
Statement of James Senior	DD	274

* * * * *

(The jury began deliberations at or about 2:15 p.m.)

(At or about 5:00 p.m. the following occurred:)

THE COURT: Resume our session. You may call the jury.

(The jury returned to the courtroom.)

THE COURT: I have called you all because of the hour. I am not trying to hurry your deliberations at all. I want you to have time enough to consider them, and consider them with all the thought that you can. However, I would like to know if it is a matter of a couple of hours, I can send out and get sandwiches. If it is a matter of more than that, and you want to have dinner, it can be arranged. I can send out and make those arrangements. I cannot allow you to leave before I have some sort of a verdict.

You could readily see, if somebody got sick overnight, I would have to declare a mistrial, and this case would have to start all over again. It would be an impossibility.

Is anybody in a position to tell me how long you feel that you want, or whether sandwiches would do, or would you like a sit-down dinner?

A JUROR: I think it is going to be a while.

THE COURT: That is all I need to know. You may retire to the jury room, and arrangements will